

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

IN RE: )  
 ) Chapter 13  
JAMES RICHARD SMITH and )  
ELNORA MARIE SMITH ) Case No. 13-31258-DOT  
 )  
Debtors. )

VANDERBILT MORTGAGE AND )  
FINANCE, INC. )

Movant, )

v. )

JAMES RICHARD SMITH )  
P.O. Box 201 )  
Hague, Virginia 22469 )

**NOTICE OF MOTION and  
MOTION FOR RELIEF  
FROM STAY**

ELNORA MARIE SMITH )  
P.O. Box 201 )  
Hague, Virginia 22469 )

and )

CARL M. BATES, TRUSTEE )  
P.O. Box 1819 )  
Richmond, Virginia 23218 )

Respondents. )

ALSO SERVE: )

EMILY C. FORT, ESQ. )  
PATRICK T. KEITH, ESQ. )  
Boleman Law Firm, P.C. )  
P.O. Box 11588 )  
Richmond, Virginia 23230 )

WOODS ROGERS PLC  
ATTORNEYS AT LAW

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{#1611623-1, 107217-00940-01}

## NOTICE OF MOTION AND HEARING

***Your rights may be affected.*** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not wish the Court to grant the relief sought in the motion, or if you want the Court to consider your views on the motion, then within 14 days from the date of service of this motion, you must file a written response explaining your position with the Court and serve a copy on the movant. Unless a written response is filed and served within this 14-day period, the Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the 14-day period.

A preliminary hearing is scheduled to be held on **July 31, 2013 at 11:00 a.m.** in Courtroom 5100, 701 East Broad Street, Richmond, Virginia.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

## MOTION FOR RELIEF

COMES NOW, Vanderbilt Mortgage and Finance, Inc. ("Movant"), by counsel, and respectfully requests that the automatic stay provisions of 11 U.S.C. Section 362 be rescinded and for its reasons states as follows:

1. The United States Bankruptcy Court for the Eastern District of Virginia has jurisdiction over this Motion for Relief from Stay pursuant to 11 U.S.C. Sections 362, 28 U.S.C. Section 1334, 28 U.S.C. Section 157(a), and Rules of Bankruptcy Procedure 4001 and 9014.
2. James R. Smith and Elnora M. Smith ("Debtors") filed a petition pursuant to Chapter 13, Title 11 of the United States Code on March 8, 2013.
3. On March 19, 2002, Debtors entered into a Retail Installment Contract – Security Agreement for the purchase of a 2002 Clayton Mobile Home, Manufacturer's Serial No.

CLH027803TNAB (the "Mobile Home"), payment of which is secured by the Mobile Home and a Deed of Trust dated March 19, 2002 as to real property known as 5672 Nomini Hall Road, Hague, Virginia 22469, located in Westmoreland County, Virginia ("Real Property"), and more particularly described as follows:

All those certain lots or parcels of land near Cople, Westmoreland County, Virginia, containing an area of one acre, more or less, according to a plat of survey made by Richard B. Allison, Jr. and Associates, C.L.S. dated February 27, 1998.

BEING the same real estate conveyed to James Richard Smith and Elnora Marie Smith, husband and wife, as tenants by the entirety, with the right of survivorship as at common law, by Deed from Henrietta C. Thompson dated April 24, 1998 and recorded in the Clerk's Office, Circuit Court, Westmoreland County, Virginia in Deed Book 485, page 591.

4. The Debtors' Chapter 13 Plan provides that regular monthly payments are to be paid directly to Movant for the Mobile Home.
5. The Debtors have failed to make payments as provided in the Plan and are currently due for the April through June 2013 monthly payments, for a total of \$2,171.12.
6. Failure to lift the automatic stay and allow Movant to take possession of the Mobile Home and Real Property will result in irreparable harm, loss, and damage to Movant.

WHEREFORE, Movant respectfully requests that the automatic stay in effect pursuant to 11 U.S.C. Section 362 be terminated as to the Mobile Home and Real Property in order that Movant may protect its interests and for such other and further relief as is just.

VANDERBILT MORTGAGE AND  
FINANCE, INC.

By:           /s/ Richard C. Maxwell            
Of Counsel

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*Counsel for Movant*

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of July, 2013 the foregoing was filed electronically with the U.S. Bankruptcy Court, was served electronically on those parties who are CM/ECF participants, and was served by U.S. Postal Service on those parties who are non-CM/ECF participants. The foregoing was served on:

James R. Smith  
P.O. Box 201  
Hague, VA 22469

Elnora M. Smith  
P.O. Box 201  
Hague, VA 22469

Emily C. Fort, Esq.  
Patrick T. Keith, Esq.  
Boleman Law Firm, P.C.  
P.O. Box 11588  
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Carl M. Bates, Trustee  
P.O. Box 1819  
Richmond, VA 23218

/s/ Richard C. Maxwell